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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,593	07/18/2003	Robert M. Killmer SR.	KILLMER - 1	2589

7590 08/16/2007  
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EXAMINER
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TUROC, DAVID P

ART UNIT	PAPER NUMBER
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1762

MAIL DATE	DELIVERY MODE
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08/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,593	<b>Applicant(s)</b> KILLMER, ROBERT M.	
	<b>Examiner</b> David Turocy	<b>Art Unit</b> 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/2/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendments, filed 7/2/2007, have been fully considered and reviewed by the examiner. The examiner notes the amendments to claims 9, 12 and 13 and the cancellation of claims 10 and 14-19. In view of the cancellation of the claims, the examiner has withdrawn the 35 USC 112 2<sup>nd</sup> paragraph rejection. Claims 9 and 11-13 remain pending in the instant application.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims have been considered but are moot because they are directed to newly added limitations that were not present at the time of the prior rejection and will be addressed in the rejections that follow.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 9, 11, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6908046 by Jordan, hereafter Jordan.

Jordan discloses a method for painting a fence, which broadly can be considered a "traffic barrier" as required by the claim. Jordan discloses providing inward facing spray heads that spray material, orienting the spray heads to spray an area and rolling the frame along the fence (Figures, abstract). Jordan discloses a vehicle that straddles the traffic barrier, wherein a wheeled frame has a central opening and support wheels on both sides of the barrier (figures). Jordan discloses spraying both sides of the fence (figure 3).

Claim 11: Jordan sprays paint.

Claim 12: Jordan discloses providing an engine to create self propulsion that rotates atleast one support wheel. (Column 5).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan in view of US Patent 5865943 by Marty, hereafter Marty.

Jordan discloses all that is discussed above and teaches manually detects dimensions and adjusts the spray heads to compensate for the change in dimensions (Column 7, lines 10-17). However, Jordan fails to disclose detecting changes in the traffic barrier by a guide wheel as required by the claims. However, Marty discloses a known method for self propelled coating of a object discloses that a spraying process can be controlled by using guide wheels, which roll along the traffic barrier and adjusting the spray nozzles for changes in the dimensions detected (Column 5, lines 10-51). Therefore it would have been obvious because a person of ordinary skill in the art would have been motivated to combine the teachings of Marty with Jordan to achieve the claimed invention because there would have been a reasonable expectation of successfully providing a traffic barrier coating that straddles the traffic barrier including guide rolls that adjust the spray heads during the process.

8. Claims 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted state of the art ("ASA") in view of Marty as applied above and further in view of Marlek, and Jordan.

The admitted state of the art discloses a method for maintenances for cement traffic barrier by cleaning using solid abrasives and water and subsequently painting the cement barriers (0008-0010). However, ASA fails to disclose advancing a first set of nozzle to spray cleaning solution and a second set of nozzles to coat the material. However, Marty, teaching of an automatic maintenance of traffic barriers discloses providing a spraying apparatus including both cleaning nozzles, for spraying cleaning solution, and a painting nozzle (Column 12, lines 15-28).

Therefore, taking the references collectively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified ASA to provide spraying and painting on a concurrent apparatus as suggested by Marty to reap the benefits of increased efficiency.

ASA in view of Marty fail to discloses spraying apparatus that straddles the traffic barrier, including support wheels. However, Marlek discloses spraying a traffic barrier by providing a vehicle that straddles the traffic barrier so as to treat all sides concurrently (figures), and Jordan discloses an automatic spray apparatus that straddles the substrate and includes an engine to provide a manual free coating process, wherein the support wheels roll during the coating process (figures).

Therefore, taking the references collectively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified ASA in view of Marty to using an spraying structure that straddles the traffic barrier as suggested by Markel with a reasonable expectation of success because Jordan discloses a known self

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propelled coating apparatus that straddles the substrate to reap the benefits of efficiently cleaning and coating both sides of the traffic barrier concurrently.

Claim 11-12: The limitations of these claims are discussed above.

Claim 13: ASA in view of Marty, Marlek and Jordan fails to disclose detecting changes in the traffic barrier by a guide wheel as required by the claims. However, Marty discloses a known method for self propelled coating of a object discloses that a spraying process can be controlled by using guide wheels, which roll along the traffic barrier and adjusting the spray nozzles for changes in the dimensions detected (Column 5, lines 10-51). Therefore it would have been obvious because a person of ordinary skill in the art would have been motivated to combine the teachings of ASA in view of Marty, Marlek and Jordan to achieve the claimed invention because there would have been a reasonable expectation of successfully providing a traffic barrier coating that straddles the traffic barrier including guide rolls that adjust the spray heads during the process.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

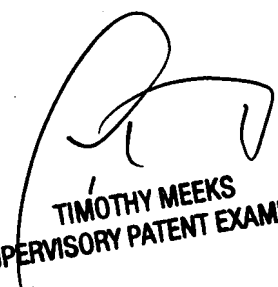
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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/David Turocy/  
Patent Examiner  
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TIMOTHY MEEKS  
SUPERVISORY PATENT EXAMINER